

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

FOULGER PRATT CONSTRUCTION INC.
and JOHN K. BUTLER
Respondents

Case No.: I-00-11157

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code §§ 6-2701, *et seq.*) and Title 21, Chapter 5 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-11157) served March 19, 2001, the Government charged Respondents Foulger Pratt Construction, Inc. and John Butler¹ with the violations of 21 DCMR 506.2 (failure to comply with an approved erosion and sedimentation plan)²; 21 DCMR 538.1(j)

¹ Respondent Butler is identified in the record as being the site superintendent for Respondent Foulger Pratt Construction, Inc.

² 21 DCMR 506.2 provides: “If on final inspection or during any interim inspection, the Department of Public Works determines that the permittee has failed to comply with the plan, the Department of Consumer and Regulatory Affairs shall immediately serve upon the permittee, by registered or certified mail to the address specified by the permittee in his or her permit application, a notice to comply with the plan.”

(failure to provide sediment traps)³; 21 DCMR 538.1(k) (failure to establish a temporary cover for graded area)⁴; 21 DCMR 539.4 (failure to have in place adequate exposure erosion control measures)⁵; 21 DCMR 539.5 (creating a period of exposure exceeding 120 days)⁶; and 21 DCMR 539.6 (failure to provide temporary or permanent stabilization during or after rough grading).⁷ The Notice of Infraction alleged that the violations occurred on March 12, 2001 at 3700 Massachusetts Avenue, N.W., and sought a fine in the amount of \$100.00 for each of the alleged violations, for a total of \$600.00.

On April 3, 2001, Respondents entered a timely plea of Admit with Explanation, pursuant to D.C. Code 6-2712(a)(2), together with a request for a suspension or reduction of the fines sought. In their letter of explanation, Respondents stated that all infractions listed on the Notice of Infraction had been corrected as of April 3, 2001. Respondents further explained that, at the time of the issuance of the Notice of Infraction, they were “gearing up to start the permanent landscaping” This administrative court issued an order on April 9, 2001 permitting the Government to reply to the Respondents’ plea and request within ten (10) calendar days from the

³ 21 DCMR 538.1(j) provides: “Employ sediment traps to protect inlets or storm sewers below silt-producing areas.”

⁴ 21 DCMR 538.1(k) provides: “Establish temporary cover by seeding or mulching graded areas except streets and parking areas where underground utilities are planned which may otherwise be exposed for a period greater than thirty (30) days before permanent stabilization can be achieved. This practice should be accomplished as soon as rough grading work is done.”

⁵ 21 DCMR 539.4 provides: “Adequate erosion control measures shall be in place prior to and during the time of exposure.”

⁶ 21 DCMR 539.5 provides: “The period of exposure shall not exceed one hundred twenty (120) days.”

⁷ 21 DCMR 539.6 provides: “Temporary or permanent stabilization shall be installed during or immediately upon completion of rough grading activities.”

service date. Because no response has been received from the Government within the allotted time, this matter is now ripe for adjudication.

II. Findings of Fact

1. By their plea of Admit with Explanation, Respondents have admitted violating 21 DCMR 506.2; 21 DCMR 538.1(j); 21 DCMR 538.1(k); 21 DCMR 539.4; 21 DCMR 539.5; and 21 DCMR 539.6 on March 12, 2001 as charged in Notice of Infraction.
2. On March 12, 2001, Respondents failed to comply with an approved erosion and sedimentation control plan; failed to provide sediment traps to protect inlet or storm sewers below silt-producing area; failed to establish temporary cover by seeding or mulching graded area; failed to have in place adequate erosion control measures before and during exposure; created a period of exposure exceeding one hundred-twenty (120) days; and failed to provide temporary or permanent stabilization during or after rough grading at the 3700 Massachusetts Avenue site.
3. Respondents have acknowledged responsibility for their unlawful conduct.
4. As of April 3, 2001, Respondents had corrected all violations cited in the Notice of Infraction.
5. By order dated September 29, 2000, this administrative court found Respondent Foulger Pratt Construction, Inc. liable for a violation of 21 DCMR 502.1, which requires persons who engage in land disturbing activities within the District of Columbia to obtain a permit. *See Department of Health v. Foulger Pratt Construction, Inc.*, OAH Decision and Final Order, Case Nos. I-00-10222/10322

(September 29, 2000). In that case, Respondent Foulger Pratt Construction, Inc. and its co-Respondent entered a plea of Admit with Explanation to the June 15, 2000 violation. The matter was closed on October 12, 2000 upon Respondents' timely payment of the adjudicated fine and penalty.⁸

III. Conclusions of Law

1. On March 12, 2001, Respondents violated 21 DCMR 506.2; 21 DCMR 538.1(j); 21 DCMR 538.1(k); 21 DCMR 539.4; 21 DCMR 539.5; and 21 DCMR 539.6. A fine in the amount of \$100.00 is authorized for each of the violations, for a total of \$600.00. *See* 16 DCMR 3234.2(c); 16 DCMR 3234.2(v); 16 DCMR 3234.2(w); 16 DCMR 3234.2(y); 16 DCMR 3234.2(z); 16 DCMR 3234.2(aa).
2. Respondents have requested a suspension or reduction in the assessed fines. Respondent Foulger Pratt Construction, Inc.'s admitted violation of 21 DCMR 502.1 in Case Nos. I-00-10222/10322 does not support a reduction of the fines. *See* D.C. Code § 6-2703(b)(6). On the other hand, Respondents have acknowledged responsibility for their unlawful conduct, and the record reflects uncontroverted evidence that they acted promptly to correct the cited violations. Under these circumstances, therefore, this administrative court concludes that a reduction, although not a suspension, of the fines is appropriate. Accordingly, Respondents'

⁸ Of course, this administrative court may take judicial notice of its own docket. *See* Fed. R. Evid. 201; *see also* *Sherman v. Comm'n on Licensure*, 407 A.2d 595, 598 n.6 (D.C. 1979) (discussing propriety of taking judicial notice of prior guilty plea).

fine shall be reduced from \$600.00 to \$500.00. *See* D.C. Code § 6-2712(a)(2); U.S.S.G. § 3E1.1.

IV. Order

Therefore, upon the entire record in this case, it is hereby this _____ day of _____, 2001:

ORDERED, that Respondents, who are jointly and severally liable, shall pay a total of **FIVE HUNDRED DOLLARS (\$500.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Code § 6-2713(f), the

placement of a lien on real or personal property owned by Respondents pursuant to D.C. Code § 6-2713(i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ **7/27/01**

Mark D. Poindexter
Administrative Judge